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Corporation; Polo Retail, LLC; Polo Ralph Lauren Corporation,
13 doing business in California as Polo Retail Corporation; and
Fashions Outlet of America, Inc.
14

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

19 ANN OTSUKA, an individual and on behalf
of all others similarly situated; JANIS
KEEFE, an individual; CORINNE PHIPPS,
20 and individual; JUSTIN KISER, an
individual; and RENEE DAVIS,
21

Plaintiff,

22 v.

23 POLO RALPH LAUREN CORPORATION;
POLO RETAIL, LLC; POLO RALPH
24 LAUREN CORPORATION, DOING
BUSINESS IN CALIFORNIA AS POLO
25 RETAIL CORPORATION; AND
FASHIONS OUTLET OF AMERICA, INC.,
26

Defendants.
27
28

Case No. C07-02780 SI

**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' *EX PARTE* REQUEST FOR
APPROVAL OF NOTICE TO CLASS
MEMBERS**

Judge: Hon. Susan Illston
Ctmm: 10, 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

Defendants Polo Ralph Lauren Corporation; Polo Retail, LLC; Polo Ralph Lauren Corporation, doing business in California as Polo Retail Corporation; and Fashions Outlet of America, Inc. (collectively, "Polo") oppose Plaintiffs' Janis Keefe, Corrine Phipps and Renee Davis ("Plaintiffs") Request for Order Permitting Notice to Class ("Class Notice Request") on the grounds set forth below.

I. INTRODUCTION

Polo opposes the Class Notice Request on both procedural and substantive grounds. First, the Class Notice Request is premature because of Polo's pending motion for decertification filed on August 18, 2008. Second, Plaintiffs' *ex parte* procedure does not leave Polo with sufficient time to fully analyze the Class Notice Request and discuss it with its client. Plaintiffs could have, and should have, filed their Class Notice Request as a regularly-noticed motion with a briefing schedule.¹ There is no reason why Class Notice Request cannot be heard as part of a regularly noticed motion and, further, Polo is unduly prejudiced by Plaintiffs' attempt to rush to class notice via *ex parte* application.

Finally, even if the Court is inclined to consider the substance of the Class Notice Request at this juncture, the Class Notice Request must be modified under the terms of Rule 23, and the Court should consider entering Polo's proposed alternative notice filed concurrently herewith.²

II. ARGUMENT

A. Class Notice Should Be Deferred Until The Court Rules On Polo's Motion For Decertification or At Least Until Such Time As the Court sets a Formal Briefing Schedule for a Hearing on Plaintiff's Request for Notice.

This Court, on July 8, 2008, issued its Order certifying this case to proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3). The Court certified the following class:

All former sales associates and cashiers who were employed in defendants' retail and outlet stores in the state of California between May 30, 2002 and the conclusion of this action.

¹ Plaintiffs in fact could have included their proposed notice to class as part of their Motion for Class Certification filed on June 6, 2008, such that Polo could have responded to it as part of its opposition to the regularly scheduled motion for class certification.

² Polo submits its draft alternative notice without waiving its right to supplement or further revise the proposed notice should the court be willing to set a noticed hearing schedule for this matter.

The Court also certified two subclasses of former employees of defendants:

1. All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program.

Polo filed its Motion For Decertification Of Plaintiffs' Rest Break Class ("Motion For Decertification") on August 18, 2008. The Motion For Decertification seeks to decertify the class rest break claims. Polo's Motion For Decertification cites that the July 22, 2008 decision by the Fourth Appellate District Court of Appeal in *Brinker Restaurant Corporation v. The Superior Court of San Diego County (Hohnbaum)*, Case No. D049331, ___ Cal.App. 4th ___, 2008 WL 2806613 (July 22, 2008) ("*Brinker*"), which represents a significant change in substantive California law on rest breaks.

The Class Notice Request is thus premature because of the pending Motion For Decertification. In the interests of efficiency and class management, Polo requests the Court defer consideration of the Request for Class Notice until it has first considered the pending Motion to Decertify.³

B. Defendants initial substantive objections to plaintiffs' proposed notice

Class notice, for classes certified under FRCP, Rule 23(b)(3) must "clearly and concisely state in plain, easily understood language":

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;

³ On Friday, August 23, 2008 at 5:00 p.m. Polo also received service of Plaintiffs' separate *ex parte* letter request to the Court by which Plaintiffs seek to continue Polo's Motion to Decertify from October 10, 2008 until November 3, 2008 or later. Polo objects to that request and will file a responsive letter this week; however, Polo notes that the form of Plaintiffs' request is improper and does not comply with Civil L.R. 7-7. Given the pending Request for Class Notice, Motion to Decertify, a presently stipulated November 4, 2008 Mediation before JAMS, and Plaintiffs latest August 23, 2008 request to continue the Motion for Decertification, Polo requests the Court set a consolidated expedited hearing schedule for all these matters to be adjudicated in one hearing. Polo requests the Court consider a combined hearing on all these matters for late September 2008.

- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

FRCP, Rule 23(c)(2)(B) (emphasis added).

Both the definition of the class certified and the class claims themselves, subparts (ii) and (iii) of FRCP, Rule 23(c)(2)(B), are explicitly required by the Federal Rules of Civil Procedure to be included in class notice. The content of both of these items is dependent on the Court's ruling on the Motion For Decertification.

If Plaintiffs send out class notice now, before the Court has had an opportunity to rule on Polo's Motion For Decertification, there is a significant chance that a revised class notice will have to be distributed to class members. It would be costly, inefficient, and a misuse of the Court and the parties' resources to send a class notice at this juncture. *See, e.g., Davis v. Homecomings Fin.*, Case No. C-05-1466RSL, 2007 U.S. Dist. LEXIS 39977 (W.D. Wash. June 1, 2007) (granting defendant's request to decertify the class and stating that "Because notice of the certification has not been sent to class members, no additional notice must be sent of the decertification unless the parties argue otherwise within ten days of the date of this order.").

While Polo is prejudiced by Plaintiffs' *ex parte* approach to securing approval for class notice, Plaintiffs have not shown, and cannot show, that they will be prejudiced or harmed in any way by a notice hearing or a short delay pending the Motion to Decertify.

Polo deserves the opportunity to thoroughly review and analyze the Class Notice Request, and to conduct the necessary legal and factual research to adequately evaluate the proposed class notice. As the Court and parties are aware, the form and content of class notice is a critical component of the class action process. Hasty decisions and results should be avoided. Where, as here, there is no prejudice to Plaintiffs by waiting a short period of time, issues regarding class notice should be fully and completely briefed by the parties to ensure that the notice is neutral and objective as required by Rule 23.

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1 **1. Notice to Class Members is Regulated by This Court**

2 The form and content of the notice to the class of pendency of the class action is regulated by
 3 the Court. Fed R. Civ. Proc. § 23(c)(2), (d)(2). The notice is a matter of extreme importance,
 4 committed to the discretion of the court, not the “whim of litigants”. *City of San Jose v. Superior*
 5 *Court* (1974) 12 Cal. 3d. 447, 454. One of the purposes of the courts supervisory role is to assure
 6 that the notice be “neutral and objective in tone, neither promoting nor discouraging the assertion of
 7 claims”. *Zarate v. Younglove* (C.D.Cal.1980) 86 F.R.D. 80, 101. “It is essential that the class
 8 members decision to participate or to withdraw be made on the basis of independent analysis of its
 9 own self-interest. It is the responsibility of courts as neutral arbiters, and of the attorneys in their
 10 adversary capacity, to insure this type of free and unfettered decision. The mechanism selected for
 11 accomplishing this is the class notice, which is designed to present the relevant facts in an unbiased
 12 format. The process of creating such notice [involves the court and the parties working together].
 13 *Gainey v. Occidental Land Research*, (1986) 186 Cal.App.3d 1051, 1057-1058.

14 **2. Plaintiffs Proposed “Postcard” to class members violates Fed. R. Civ. Proc. §**
 15 **23(c)(2) by failing to provide requisite notice of claims to class members**

16 Fed R. Civ. Proc. § 23(c)(2) provides: “In any class maintained under subdivision (b)(3), the
 17 court shall direct to the members of the class the best notice practicable under the circumstances,
 18 including individual notice to all members who can be identified through reasonable effort. The
 19 notice shall advise each member that (A) the court will exclude him from the class if he so requests
 20 by a specified date; (B) the judgment, whether favorable or not, will include all members who do not
 21 request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an
 22 appearance through his counsel. (emphasis added)

23 Under Plaintiffs current proposal, class members would only receive a 3 x 5 postcard
 24 containing virtually no substantive information about this lawsuit or the rights of the class members.
 25 Rather than providing actual notice to class members about what they need to know concerning this
 26 lawsuit as required by Fed. R. Civ. Proc. § 23(c)(2), Plaintiffs proposal requires class members to
 27 affirmatively take action to learn about their rights by going online and visiting Mr. Kitchen’s
 28 website to view the “long form” notice. Plaintiffs “postcard” violates Fed. R. Civ. Proc. § 23(c)(2)

1 by not providing "the best notice practicable" because it does not contain the information required in
2 subsections A through C of Fed. R. Civ. Proc. § 23(c)(2), such as 1) the specified date to opt out 2)
3 the fact that the judgment will include all members who do not opt out and 3) that members not
4 requesting exclusion may enter an appearance through their counsel.

5 The "postcard" method of notice also provides an extra hurdle to class members wanting to
6 opt-out, as the information they need to learn about how to opt-out would not be provided on the
7 postcard, but rather only by going online to Mr. Kitchin's website to read the "long form" notice.
8 There is no way for this court to ensure that class members understand the case or their rights if this
9 information is not imparted in the initial mailing. For example, some class members may not have
10 access to the internet and should not have to take the cumbersome extra step of writing or calling Mr.
11 Kitchin when this information can simply be contained in the "long form" notice received by class
12 members.

13 For these reasons and as set forth below, Defendants request that Plaintiffs receive Notice
14 exclusively via the court-approved "long form" mailed directly to class members.

15 3. **Plaintiffs proposed "postcard" notice directing class action traffic to his**
16 **biased website is not "neutral and objective in tone"**

17 The Court is required to approve notice that is neutral and objective in tone, neither promoting
18 nor discouraging the assertion of claims. *Zarate*, supra at 101. Under Plaintiffs current proposed
19 "postcard" notice, class members wanting to learn basic information about this case, such as the
20 claims involved and their rights as class members, would be required to visit the biased website
21 created and maintained by Plaintiffs counsel. The main page of this website which class members
22 would be required to visit before clicking on the link to notice contains inflammatory, biased
23 language about this lawsuit, including that Polo "detained" its employees in the locked store, and
24 used fraud in its hiring practices. (www.poloclassaction.com). Not only does this violate the
25 neutrality requirements of class notice, to alleviate this concern the Court would be required to
26 approve and continuously regulate the content of Mr. Kitchin's website.
27
28

1 4. **Defendants Request that the Court approve for mailing the red-line**
 2 **version Plaintiffs "Long Form" Notice**

3 Defendants have formulated an initial alternative proposed notice. Defendants have
 4 attached as Exhibit A hereto a red-line version from the draft submitted by Plaintiff, and have
 5 attached as Exhibit B a full version with their changes. A detailed explanation why these changes are
 6 appropriate is set forth below.

7 (a) Revisions to the first page of Plaintiffs proposed Notice

8 (1) Plaintiffs did not seek class certification on behalf of Customer
 9 Service Representatives

10 Paragraph 2 of Plaintiffs proposed Notice contains the heading "Who are members of the
 11 class?" Under this section Plaintiffs have included, in addition to the approved class of former sales
 12 associates and cashiers, "customer service representatives". Plaintiffs did not seek class certification
 13 on behalf of "customer service representatives", . Because customer service representatives were not
 14 included as part of Plaintiffs Motion for Class Certification, this reference should be stricken from
 15 paragraph 2.

16 (2) Revisions to Claim Description

17 Defendants have only minor changes to paragraph 3 of Plaintiffs proposed Notice and will
 18 leave those to the Courts discretion. Paragraph 4 contains the heading: "What are the specific
 19 claims?" The second bullet point under this section is "Failure to allow employees to take *all* of their
 20 rest breaks"(emphasis added). This claim misstates the law as it relates to rest breaks by implying
 21 that employers are required to *ensure* that employees take *all* of their rest breaks. In the *Brinker*
 22 decision, the court clarified this issue by stating specifically that employers must provide, but not
 23 ensure, rest breaks, and allows employees to waive their rest breaks if they so choose. Rewording
 24 this language to "Failure to make rest breaks available" more clearly describes the current standard
 25 under the law. However, given the Defendants pending motion for decertification on this very issue,
 26 Defendants maintain that it is premature to give notice to class members until after this Court has had
 27 the opportunity to rule on Defendants motion for decertification."
 28

1 The third bullet point under this section is “failure to pay premium overtime wages”. This
 2 bullet point should be eliminated as it is redundant-the claim it describes is encompassed in the first
 3 and last bullet points, as the only overtime recovery being sought by plaintiffs is related to either 1)
 4 time spent waiting for bag check inspections or 2) misclassification of employees as exempt from
 5 premium overtime pay. Because there are no class overtime claims outside the first and last bullet
 6 points, the third bullet point should be eliminated.

7 (b) Revisions to the third page of Plaintiffs proposed Notice

8 (1) Revealing the Social Security Numbers of class members is
 9 prohibited in class action litigation as a violation of the privacy
 10 rights of class members

11 The second paragraph on page 3 is the last bullet point describing the rights and obligations of
 12 class members. As drafted this section states: “You will be deemed to have consented to defendants’
 13 disclosing certain personally identifiable information about you from defendants records to counsel
 14 for the class so they may represent you and determine the amount of any monetary recovery to which
 15 you may be entitled.” Defendants object to this entire paragraph on a number of grounds.
 16 First, the phrase “personally identifiable information” is vague and gives class members no clear idea
 17 of exactly what information will be disclosed: their name? Address? Social Security number?
 18 Employment records?

19 Mr. Kitchin indicates in his declaration that he has made several requests for contact
 20 information for class members, including Social Security Numbers. Declaration of Patrick Kitchin
 21 (“Kitchin Decl.”), ¶ 8. In the interest of protecting the privacy of former employees, Defendants
 22 oppose any request by Mr. Kitchin for the Social Security Numbers of class members, and in fact,
 23 case law prohibits Polo from making such a disclosure. Additionally, Plaintiffs have already
 24 propounded document requests seeking this information and have not even waited for Polo to
 25 respond to the discovery. Instead, Plaintiffs now improperly attempt to circumvent discovery rules
 26 and ask this Court to unilaterally order such information to be produced without even so much as
 27 allowing Defendants to frame appropriate document request objections and responses.

28 There is no need to address ongoing discovery before Polo has even had a chance to respond
 to the relevant requests. Plaintiffs can file a motion to compel or engage in further meet and confer

1 when they receive Polo's responses (which are due to be served August 25, 2008). It is premature
2 and prejudicial to raise these discovery issues in this Request.

3 Mr. Kitchin's declaration states he is concerned that not enough class members will receive
4 notice unless he is able to trace them through their Social Security Numbers: "I have explained to Mr.
5 Goines that Social Security Numbers of class members will provide us with the best chance of
6 reaching the vast majority of class members due to the added strength of performing skip trace
7 research based on credit header research." Kitchin Decl. ¶9. However, courts have rejected this
8 exact argument, finding that protecting the privacy of class members outweighs the interest of
9 providing the most thorough possible notice. In *Santos v. Camacho*, Case Nos. 04-00006, 04-00038,
10 04-00049, 2008 WL 1699448, 2008 U.S. Dist. LEXIS 35991 (D. Guam April 23, 2008), the class
11 representatives sought the social security number of class members. The class representative made
12 the same argument as Mr. Kitchin, "[Plaintiff] suggests that merely mailing the notices to the last
13 known address of class members contained in the DRT database falls below accepted class notice
14 standards especially when Social Security numbers are known. Where Social Security Numbers
15 ("SSN") are known, [Plaintiff] states that there are many ways to quickly and cheaply obtain updated
16 addresses for class members (citations). The parties could have employed the services of a reputable
17 SSN look up service."

18 However, the *Santos* Court rejected this argument, finding that notice to the last known
19 addresses of class members was perfectly sufficient under Fed. R. Civ. Proc. 23(c)(2), citing the
20 following cases. "Neither [R]ule 23 nor due process requires that a settlement fund be depleted in
21 efforts to perfectly address mailed claim notices. It is fair and reasonable to proceed, as the district
22 court did here, by mailing claim notices to last known addresses of potential class members and by
23 publication." *Id.* at *52, quoting *In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1127, n. 5 (9th Cir.
24 1977). Many other Federal district courts have also held that Social Security numbers of class
25 members need not be disclosed: see *Humphries v. Stream Int'l*, 2004 U.S. Dist. LEXIS 20465 at *11
26 (N.D. Tex. 2004), *Robinson-Smith v. Gov't Employees Ins. Co.*, 2001 U.S. Dist. LEXIS 25516 at *8-
27 *9 (D.D.C. 2001), *Sharer v. Tandberg, Inc.*, 2006 U.S. Dist. LEXIS 75357 at *3 (E.D. Va 2006),
28 *Hens v. ClientLogic Operating Corp.*, 2006 U.S. Dist. LEXIS 69021 at *5 (W.D.N.Y 2006).

1 “It is widely recognized that for the due process standard to be met it is not necessary that
 2 every class member receive actual notice, so long as class counsel acted reasonably in selecting
 3 means likely to inform persons affected.” *In re Prudential Sec. Inc. Ltd.*, 164 F.R.D. 362, 368
 4 (S.D.N.Y.1996) (citations omitted). *See also Grunin v. Internat'l House of Pancakes*, 513 F.2d
 5 114,121 (8th Cir.1975) (notice by mail to class members' last known address satisfied requirements
 6 under due process even though one-third of class members were not reached). Accordingly, the fact
 7 that some class members may not have actually received the Notice does not render the whole
 8 mailing defective.” *Santos* at 16.

9 Defendants have agreed to provide all information to Plaintiffs sufficient for class members to
 10 be contacted and informed of this lawsuit at their last known address without disclosing this highly
 11 confidential information. If Plaintiffs wish to receive the social security numbers of class members,
 12 then the structure of this class action should be changed so that class members should be required to
 13 opt-in, to ensure that former employees are making an affirmative choice to have their social security
 14 number revealed to Mr. Kitchen and a third party class action administrator.

15 If the Court is inclined to order Defendants to provide the social security numbers of former
 16 employees on an opt-out basis, then Defendants request that bullet point #1 under this section reads
 17 as follows, in all capitals: “IF YOU TAKE NO ACTION WITH REGARD TO THIS LAWSUIT
 18 YOU WILL BE DEEMED TO HAVE CONSENTED TO DEFENDANTS DISCLOSING YOUR
 19 SOCIAL SECURITY NUMBER TO THE LAW OFFICES OF PATRICK KITCHIN AND A
 20 THIRD PARTY CLASS ACTION CLAIMS ADMINISTRATOR.” It is imperative that Defendants
 21 protect the right of their former employees to prevent the disclosure of their confidential Social
 22 Security number against their wishes. To ensure that the disclosure of their Social Security number is
 23 not buried in the last bullet point under this section as currently drafted, the above provision should
 24 be provided in all caps.

25 (2) All class contact regarding notice should be coordinated
 26 through the third party claims administrator

27 Defendants object to the first line on page 3 stating “You should notify plaintiffs counsel, by
 28 email to prk@kitchenlegal.com, of any change in your mailing address or email address”. The last

1 part of this sentence should be changed to refer class members to third party class action
2 administrator Rosenthal & Co for any address changes. If Plaintiffs are retaining the services of a
3 third party claims administrator to provide notice and monitor the class members, then this should be
4 sufficient. For the same reason, in the third and sixth paragraph of page 3, Defendants request that
5 this be changed to reflect that class members communications concerning notice be coordinated
6 through Rosenthal & Co.

7 **C. Polo Requests a Consolidated Hearing on Both the Notice Request and the**
8 **Motion to Decertify.**

9 While Plaintiffs' counsel did provide Polo's counsel with the proposed forms of postcard and
10 long-form class notice on August 8, 2008, Polo had no idea that Plaintiffs' counsel intended to
11 provide the Class Notice Request to the Court seven court days later. Polo's counsel intended to
12 commence discussions with Plaintiffs' counsel regarding the substance of the proposed class notice.
13 However, Polo's counsel was focused on finalizing and filing its Motion For Decertification and
14 gathering information responsive to Plaintiffs' Request for Production of Documents (Set Two)
15 served on July 14, 2008, including payroll and contact information for over 5,000 class members.
16 Before Polo's counsel had the opportunity to have substantive discussions with Plaintiffs' counsel,
17 Plaintiffs' counsel filed the Class Notice Request. As noted previously, Plaintiffs have also separately
18 objected to the pending October 10, 2008 date for hearing on the Motion to Decertify. Polo is willing
19 to brief and argue all pending motion (and discovery issues) in a consolidated hearing, should the
20 Court be so inclined.

21 If the Court is inclined to consider the Class Notice Request at this juncture, Plaintiffs'
22 proposed Class Notice Request should still be rejected because it is deficient for the reasons set
23 forth above.

24 **III. CONCLUSION**

25 Polo respectfully requests that the Court continue its consideration of the Class Notice
26 Request until after the Court rules on Polo's Motion for Decertification. Alternatively, if the Court
27 wishes to allow Plaintiffs to send out notice to the class at this juncture, Polo requests that the Court
28 set a formal hearing and briefing schedule (consolidated with the pending Motion to Decertify and

1 any other related Case Management issues). In the event that the Court wishes to send out class
2 notice immediately, Polo respectfully requests that the Court enter an order for Polo's proposed
3 notice.

4 Dated: August 25, 2008.

GREENBERG TRAURIG, LLP

5
6 By: /s/ William J. Goines
William J. Goines

7 Attorneys for Defendants Polo Ralph Lauren
8 Corporation; Polo Retail, LLC; Polo Ralph
9 Lauren Corporation, doing business in California
10 as Polo Retail Corporation; and Fashions Outlet
11 of America, Inc
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EXHIBIT A

**TO DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' REQUEST FOR ORDER PERMITTING NOTICE TO CLASS**

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

NOTICE OF PENDENCY OF CLASS ACTION

NOTICE TO FORMER CALIFORNIA EMPLOYEES OF POLO RALPH LAUREN CORPORATION, POLO RETAIL, LLC POLO RALPH LAUREN CORP., DOING BUSINESS IN CALIFORNIA AS POLO RETAIL CORP., AND FASHIONS OUTLET OF AMERICA, INC. IN CALIFORNIA

Our records show you ~~are~~may be a member of a class for whom a class action has been filed in the United States District Court for the Northern District of California, entitled *Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.*, Case No. C 07-02780 SI. This is a lawsuit brought on behalf of certain former employees of Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph Lauren Corporation, doing business in California as Polo Retail Corp., and Fashion Outlets of America, Inc. ~~(otherwise known collectively as "Defendants")~~. The class representatives are Janis Keefe, Corinne Phipps and Renee Davis ("the Plaintiffs"), all former employees of the ~~defendants~~Defendants.

Who are members of the Class?

Class members are certain ~~former sales associates and cashiers/customer service representatives~~ who worked at a Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Retail Corp., and/or Fashion Outlets of America, Inc. retail or outlet store in California between May 30, 2002 and the present. This case is a class action that seeks monetary recovery ~~for alleged~~ unpaid wages, ~~and~~ including unpaid overtime wages, waiting time penalties and punitive damages.

What is the lawsuit about?

Plaintiffs allege ~~defendants~~Defendants violated California's employment ~~law~~laws and failed to pay their employees all of their wages. Defendants deny the allegations in the Complaint and assert they followed California ~~law~~and Federal law and ~~paid employees all of their wages~~. The ~~e~~ Court has not yet determined whether the ~~plaintiffs~~Plaintiffs' or the ~~defendants~~Defendants' contentions are correct, ~~or whether Defendants are in fact liable to pay any monetary amounts~~

What are the Plaintiffs' specific claims?

- Failure to pay employees for ~~off-the-clock~~ time spent inside the stores, ~~including time employees spent waiting for loss prevention or "bag check" inspections~~ after they clocked out and were waiting for loss prevention or "bag check" inspections;
- Failure to ~~allow employees to take all of their~~ make rest breaks available;
- ☐ ~~Failure to pay premium overtime wages~~
- Failure to timely pay all wages due at the end of class members' employment;
- ~~Failure to maintain accurate pay records~~ for employees; and
- Misclassification of certain sales employees as ~~being exempt from~~ being entitled to premium overtime pay;

Class Action Ruling

The Court has ruled that this lawsuit may be maintained by the representative ~~plaintiffs~~Plaintiffs on behalf of the following class:

"All former sales associates and cashiers who were employed in defendants' retail and outlet stores ~~in~~ the state of California between May 30, 2002 and the conclusion of this action." The Court has also certified two subclasses of former employees of ~~defendants~~ Defendants:

1. "All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program."

Estimated Recovery

Plaintiffs seek to recover back wages, including such as unpaid overtime wages, as well as civil penalties and punitive damages, as well as, Plaintiffs also seek interest on ~~these~~ those amounts, and attorney's fees and litigation costs. No trial has yet been held and the merits of Plaintiffs' claims have yet to be adjudicated. Individual class member's potential recoveries will depend on several factors, including but not limited to matters such as the amount of time the class members worked for the ~~defendants~~ Defendants.

Rights and Obligations of Class Members

If you fall with the definition of the class, you will automatically become a class member in this lawsuit. If you wish to be considered a member of the class, you do not need to do anything further at this time, and you should NOT SEND ~~an exclusion~~ a request to opt out of the class.

As a class member:

- You will be represented by the named class representatives and the attorneys representing the class. You will not be charged for this representation. If the ~~plaintiffs~~ Plaintiffs win, ~~plaintiffs~~ Plaintiffs' counsel will ask the Court that they be paid reasonable compensation for their representation of the class. However, you may enter an appearance through your own attorney, or on your own, by mailing a Notice of Appearance to the Clerk of the Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102. You may also ask the Court for permission to appear as a named class co-representative.
- You will receive notice of any rulings affecting your membership in the class and notice of any proposed settlement or dismissal of class claims or any ~~Judgment~~ judgment rendered for Plaintiffs or for Defendants.
- You will be bound by a ~~Judgment~~ judgment or other final disposition of the class lawsuit, whether that disposition is favorable to Plaintiffs' claims or not.
- You will be entitled to participate, upon meeting ~~any~~ prerequisites set by the Court, in a distribution of any monetary damages recovered in the litigation.

You should retain all records and documents pertaining to the subject matter of this case, ~~including~~ including all wage and employee documents.

- ~~You should notify plaintiffs' counsel, by email to~~ prk@kitchinlegal class action claims administrator Rosenthal & Company by email at DanR@RosenthalCo.com; of any change in your mailing address or email address.

- ~~• You will be deemed to have consented to defendants' disclosing certain personally identifiable information about you from defendants' records to counsel for the class so they may represent you and determine the amount of any monetary recovery to which you may be entitled.~~

Election to Not Participate in the Class ("Opting Out")

If you want to be excluded from the class, you must send a written notice of your intent to exclude yourself from the class, with the ~~information~~Information included below, by mail postmarked no later than _____, 2008, to: The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111. Otsuka v. Polo, c/o Rosenthal & Co., 300 Bel Marin Keys Blvd, Suite 200, Novato, CA 94949.

Please include your full name, ~~your social security number~~, your current mailing address, phone number, email address, and a statement that you wish to be excluded from the *Otsuka v. Polo Ralph Lauren* lawsuit.

~~The choice to exclude yourself from the class has certain consequences, and you may wish to consult an attorney regarding this choice. If~~ you elect to be excluded: (1) you will not be bound by any judgment in the case and will retain any claims you may have against ~~defendants~~Defendants, subject to applicable statutes of ~~limitations~~limitations, and (2) you will not share in any monetary ~~or other~~ recovery that might be paid if the class representatives are successful in ~~at~~ trial or which may be obtained from any settlement.

Status and Further informationInformation

This lawsuit may continue ~~on from this date forward~~ for a year or more longer. If you have any questions concerning the matters in this notice, (or if you have corrections or changes to your name or address (~~set to update for future notices about this case will reach you~~)), please contact ~~plaintiffs' counsel at~~ The Law Office of Patrick R. Kitchin, 565 Commercial Street, Fourth Floor, San Francisco, CA 94111, prk@kitchinlegal.com, (415) 677-9058. Plaintiffs' counsel in this action, whose information is provided below.

Counsel for Plaintiffs Ann Otsuka, et al

Patrick R. Kitchin, Esq.

The Law Office of Patrick R. Kitchin

565 Commercial Street, 4th Floor

San Francisco, CA 94111

415-677-9058

415-627-9076 (fax)

The pleadings and all other records ~~of in~~ this litigation may be examined and copied at any time during the regular office hours in the office of the Clerk of the Court ~~at the Clerk of the~~ United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102.

DO NOT CALL OR WRITE THE COURT FOR ADDITIONAL INFORMATION ABOUT THE CASE.

Document comparison by Workshare Professional on Monday, August 25, 2008
2:24:17 PM

Input:	
Document 1 ID	interwovenSite://SV-DMS1/SV/346315837/1
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Document 2 ID	interwovenSite://SV-DMS1/SV/346317212/1
Description	#346317212v1<SV> - FINAL REVISED NOTICE TO CLASS
Rendering set	GT-1

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	87
Deletions	62
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	149

EXHIBIT B

**TO DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' REQUEST FOR ORDER PERMITTING NOTICE TO CLASS**

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS, PLEASE READ IT CAREFULLY.

NOTICE OF PENDENCY OF CLASS ACTION

NOTICE TO FORMER CALIFORNIA EMPLOYEES OF POLO RALPH LAUREN CORPORATION, POLO RETAIL, LLC POLO RALPH LAUREN CORP., DOING BUSINESS IN CALIFORNIA AS POLO RETAIL CORP., AND FASHIONS OUTLET OF AMERICA, INC.

Our records show you may be a member of a class for whom a class action has been filed in the United States District Court for the Northern District of California, entitled *Otsuka, et al, v. Polo Ralph Lauren Corporation, et al.*, Case No. C 07-02780 SI. This is a lawsuit brought on behalf of certain former employees of Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph Lauren Corporation, doing business in California as Polo Retail Corp., and Fashion Outlets of America, Inc. (otherwise known collectively as "Defendants"). The class representatives are Janis Keefe, Corinne Phipps and Renee Davis ("the Plaintiffs"), all former employees of the Defendants.

Who are members of the Class?

Class members are certain *former sales associates and cashiers* who worked at a Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Retail Corp., and/or Fashion Outlets of America, Inc. retail or outlet store in California between May 30, 2002 and the present. This case is a class action that seeks monetary recovery for alleged unpaid wages, and including unpaid overtime wages, waiting time penalties and punitive damages.

What is the lawsuit about?

Plaintiffs allege Defendants violated California's employment laws and failed to pay their employees all of their wages. Defendants deny the allegations in the Complaint and assert they followed California and Federal law and paid employees all of their wages. The e Court has not yet determined whether the Plaintiffs' or the Defendants' contentions are correct, or whether Defendants are in fact liable to pay any monetary amounts

What are Plaintiffs' specific claims?

- Failure to pay employees for time spent inside the stores after they clocked out and were waiting for loss prevention or "bag check" inspections;
- Failure to make rest breaks available;
- Failure to timely pay all wages due at the end of class members' employment;
- Failure to maintain accurate pay records for employees; and
- Misclassification of certain sales employees as exempt from being entitled to premium overtime pay.

Class Action Ruling

The Court has ruled that this lawsuit may be maintained by the representative Plaintiffs on behalf of the following class:

"All former sales associates and cashiers who were employed in defendants' retail and outlet stores in the state of California between May 30, 2002 and the conclusion of this action." The Court has also certified two subclasses of former employees of Defendants:

1. "All members of the class who were sales associates and were misclassified as exempt inside commissioned salespeople.
2. All members of the class who were sales associates from whom the defendants took back earned wages through its arrears program."

Estimated Recovery

Plaintiffs seek to recover back wages, such as unpaid overtime wages, as well as civil penalties and punitive damages. Plaintiffs also seek interest on those amounts and attorney's fees and litigation costs. No trial has yet been held and the merits of Plaintiffs' claims have yet to be adjudicated. Individual class member's potential recoveries will depend on several factors, including but not limited to matters such as the amount of time the class members worked for the Defendants.

Rights and Obligations of Class Members

If you fall with the definition of the class, you will automatically become a class member in this lawsuit. If you wish to be considered a member of the class, you do not need to do anything further at this time, and you should NOT SEND a request to opt out of the class.

As a class member:

- You will be represented by the named class representatives and the attorneys representing the class. You will not be charged for this representation. If the Plaintiffs win, Plaintiffs' counsel will ask the Court that they be paid reasonable compensation for their representation of the class. However, you may enter an appearance through your own attorney, or on your own, by mailing a Notice of Appearance to the Clerk of the Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102. You may also ask the Court for permission to appear as a named class co-representative.
- You will receive notice of any rulings affecting your membership in the class and notice of any proposed settlement or dismissal of class claims or any judgment rendered for Plaintiffs or for Defendants.
- You will be bound by a judgment or other final disposition of the class lawsuit, whether that disposition is favorable to Plaintiffs' claims or not.
- You will be entitled to participate, upon meeting prerequisites set by the Court, in a distribution of any monetary damages recovered in the litigation.
- You should retain all records and documents pertaining to the subject matter of this case, including all wage and employee documents.
- You should notify class action claims administrator Rosenthal & Company by email at DanR@RosenthalCo.com of any change in your mailing address or email address.

Election to Not Participate in the Class ("Opting Out")

If you want to be excluded from the class, you must send a written notice of your intent to exclude yourself from the class, with the Information included below, by mail postmarked no later than

_____, 2008, to: Otsuka v. Polo, c/o Rosenthal & Co., 300 Bel Marin Keys Blvd. Suite 200, Novato, CA 94949.

Please include your full name, your current mailing address, phone number, email address, and a statement that you wish to be excluded from the *Otsuka v. Polo Ralph Lauren* lawsuit.

If you elect to be excluded: (1) you will not be bound by any judgment in the case and will retain any claims you may have against Defendants, subject to applicable statutes of limitations, and (2) you will not share in any monetary recovery that might be paid if the class representatives are successful at trial or which may be obtained from any settlement.

Status and Further Information

This lawsuit may continue from this date forward for a year or longer. If you have any questions concerning the matters in this notice (or if you have corrections or changes to your name or address to update for future notices), please contact Plaintiffs' counsel in this action, whose information is provided below.

Counsel for Plaintiffs Ann Otsuka, et al
Patrick R. Kitchin, Esq. The Law Office of Patrick R. Kitchin 565 Commercial Street, 4 th Floor San Francisco, CA 94111 415-677-9058 415-627-9076 (fax)

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